IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

WP(C).No. 2707 of 2007(V)

AGAINST THE ORDER DATED 14/12/2006 IN IA.646/06 & 647/06 IN OS.89/2003 of MUNSIFF COURT, DEVIKULAM

.....

PETITIONER:

MANJU M.LAL, W/O.LATE MANOHARLAL,
VAISAGHAM HOUSE, MAMAM KARA,
ATTINGAL VILLAGE, THIRUVANANTHAPURAM.

BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR

RESPONDENTS:

---

1. VANAJA J., W/O. SIVARAJAN,
POURNAMI HOUSE, KARITHOTTA MURI,
KULANADA VILLAGE, KOZHENCHERI TALUK,
PATHANAMTHITTA DISTRICT.

2. SUBHAGA @ SUBHAGA RAVEENDRAN,
W/O. RAVEENDRAN, LOI NIVAS, THACHODU,
SRINIVASAPURAM P.O., VARKALA,
THIRUVANANTHAPURAM DISTRICT.

3. SUSHAMA @ SUSHAMA THANKAPPAN,
W/O. THANKAPPAN, DWARAKA, CHERAVALLI MURI,
KAYAMKULAM VILLAGE, ALAPUZHA DISTRICT.

4. SUSEELA @ SUSEELA RAJAN, W/O.RAJAN,
THOPPIL HOUSE (ANAKUNNEL), CHERAVALLI,
KAYAMKULAM, ALAPUZHA DISTRICT.

5. LALI @ LALI MOHANAN, W/O. MOHANAN,
SRI VILASA MANDIRAM, KARAMKOD, CHATHANNUR,
KOLLAM DISTRICT.

6. YAMUNA @ YAMUNA ROY, W/O. ROY,
ROY VILLA (THAIPPARAMBIL), VADACKAL,
OPP. VILLAGE OFFICE, PARAVOOR,
ALAPUZHA DISTRICT.

7. SREEDEVI SUBHASH, W/O.SUBHASH,
6 GARDEN ROAD, SOUNAL MIDOX, LONDON,
ENGLAND, U.B.2, 5Q.E.

8. M.B.MANOJLAL, S/O.BALAKRISHNAN,
MULANTHALA, CHIRAKKADAVAM MURI,
KAYAMKULAM VILLGE, ALAPUZHA DISTRICT.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO. 2707 OF 2007

Dated 24th January 2007

J U D G M E N T

This petition is filed challenging dismissal of an application, under Section 5 of Limitation Act for condoning the delay in filing an application under Rule 13 of Order IX of Code of Civil Procedure. Remedy of the petitioner is to challenge the order, dismissing the application under Order IX Rule 13 by filing an appeal. Without filing an appeal, the challenge as against dismissal of the petition under Section 5 alone is not sustainable. Even without filing a separate revision against the order dismissing an application under Section 5 of the Limitation Act, petitioner is entitled to challenge that order in the appeal. But he is not entitled to challenge the order under Rule 13 of Order IX in a proceeding like the present one where an order under Section 5 of Limitation Act is challenged. Petitioner is not entitled to challenge the order under Order IX Rule 13 of C.P.C by re-course to Article 227 of

Constitution of India, when he has an effective remedy by way of appeal as provided under Order XLIII Rule 1 of C.P.C this petition is dismissed with liberty to file appeal.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.